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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 563

HONORABLE STEPHEN S. CHANDLER, United States District Judge for the Western District of Oklahoma,
Petitioner,

v.

OCCIDENTAL PETROLEUM CORPORATION,
Respondent.

APPENDIX to

PETITION FOR REHEARING

UTTERBACK TYPESETTING CO., 12 So. Walker, Oklahoma City, Ph. CE 5-6710

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STATEMENT OF JUDGE CHANDLER

It is the view of Judge Chandler that the important aspects of this case which go to the vital point that the Court of Appeals, having no jurisdiction whatever, found him guilty of acts which Respondent charges in its Brief in Opposition to Petition for Certiorari (pages 26 and 27) constituted "overt acts of misconduct * * * scandalizing the administration of justice"; "violation of Canons 3, 4, 5, 17, 34 and 36 of the Canons of Judicial Ethics"; violation of 28 U.S.C., Sec. 753(b) and (c); and violation of 18 U.S.C., Secs. 1503 and 1509, each constituting a felony and, if true, subjecting him to fines and imprisonment, in violation of

his sacred constitutional rights, have been completely overlooked by the Court.

Respondent, Occidental, instead of answering the important questions of jurisdiction presented by Petitioner has chosen to continue its personal vilification, violating Rule 40(5), by quoting, out of context, a few words from a very voluminous record, thus giving a completely false and distorted impression of the facts. The words quoted are entirely foreign to any issue involved, impossible of understanding except to one *thoroughly familiar with the entire record* in the *Parker* case covering several years and consisting of many volumes and thousands of pages. This highly unethical procedure, successful to date, undoubtedly has been followed by Respondent because there is no valid answer to the jurisdictional question and for the purpose of obtaining wide press coverage of the personal vilification in an attempt to destroy Petitioner's usefulness as a judge, to *confuse* and *prejudice* the Court, and thus to *obscure* the *broad extremely important vital issues* involved as it was successful in doing in the Court of Appeals.

Judge Chandler has not indulged in personalities. He has carefully refrained in the Court of Appeals and here, out of reverence for the sacred traditions and ethics of the Bar and Judiciary, from doing so. He has based his Petition upon the high grounds,

FIRST: that the Court of Appeals and Council acted without any vestige of jurisdiction, in entering the *absolutely unprecedented* and *unconstitutional* orders and judgments which are here for review and,

SECOND: that the judgments violated the statutory rights of the parties to the action, *his fundamental constitutional rights*, and the most sacred principles of our democratic form of government.

The continued repetition and reiteration by Respondent of the scurrilous matter in its Objection to Second Application of Amici Curiae, *purely personal in nature*, is inexcusable and makes it imperative that Petitioner rise to his own defense in an attempt to prevent future persecution of other judges who may find themselves in the same position if the precedent set by the judgment here involved is allowed to stand.

It now appears that unless the true pertinent facts are disclosed, the grave and un-American injustice to him as a Judge and citizen, toppling from its foundation the very cornerstone of our Judicial system, will not be brought to light and will be forever buried. This may be his last opportunity to bring them to the attention of this Court. They are necessary to an understanding of the transcendent importance of the questions involved.

Traditionally, controversies between judges are not publicly aired. This explains Judge Chandler's reticence to date. However, since the matters involved are not in any sense personality clashes but involve serious and important questions of ethics and conduct of judges and lawyers and the proper spheres of activity of Circuit and District Courts in our judicial system of the highest order arising before him in the performance of his judicial duties, as a judge

and lawyer, after long and careful consideration, he has come to the conclusion that it is his official and professional duty to disclose them in this instrument.

For this reason, with regret, impersonally, and solely because he considers it his bounden duty to do so, he makes the following necessarily brief statement of facts, and conclusions drawn from evidence before him in his capacity as judge in the *Parker* case so that the Court may grasp the nature of the case brought here and the questions here for review:

Occidental Petroleum Company through Dr. Armand Hammer, Marvin Hayutin and their attorneys, Barefoot and Bohanon, had proposed a plan of reorganization of Parker Petroleum Company pending in my Court before my late associate, Judge Wallace. Thereafter and before confirmation of the plan, Occidental sold several million dollars of its securities to the public referring to the proposed Parker plan in its prospectus.

After selling the securities it did not wish to acquire Parker. However, it was aware that the Securities and Exchange Commission was taking the position that it was in violation of the Federal Securities Laws because it had not in good faith intended to acquire Parker. For that reason Occidental decided to attempt to have the plan amended to include an escape clause, have it confirmed and later abort it, hoping that the Securities and Exchange Commission could not then sustain its contention that it had not acted in good faith at the time it proposed the plan and sold the securities to the public.

Confirmation of such a plan was obtained by fraud practiced on Judge Wallace and the stockholders and creditors of Parker by means of misrepresentations made by Luther Bohanon and Bert Barefoot, attorneys hired for that specific purpose by Dr. Hammer. Shortly after the plan was confirmed Occidental gave notice under the escape clause that it would not consummate it.

When Judge Wallace died on June 26, 1960, under the rules of our Court it became my duty to proceed in the Parker Reorganization matter, in Bankruptcy, which up until his death had been handled by him.

During subsequent proceedings I concluded from the evidence that Hayutin and Hammer, who had joined Hayutin in a second refinancing plan, proposed by Western Oil Felds, Inc., were not acting in good faith and were attempting to perpetrate another fraud upon the stockholders, creditors and the Court through Hayutin's attorney, Barefoot, and were preventing Barnholt, who was also represented by Barefoot, from reporting their dereliction and that of Barefoot, to me.

After consultation with the attorney for the trustee and the Special Master for the plan, it was determined that I had the duty to call Barnholt in to confirm or deny these facts. The *only* conference that could possibly be considered a "secret" or "closed door conference" is this one which was attended by the attorney for the trustee, the Special Master on the plan, my law clerk and my court reporter (Record, Jan. 20, 1962). The facts learned clearly confirmed the dereliction of Barefoot, Hayutin and Ham-

mer and these facts, showing clear conflict of interest between his original clients and his new client Barnholt (Western), were disclosed to Mr. Barefoot in the presence of *both* of his clients, Hayutin and Barnholt, three days later when they appeared at my request for a conference. Attendance at this conference was as before, with the addition of Barefoot and his other client, Hayutin (Record, Jan. 23-24, 1962). Transcripts of these two conferences were furnished by my order to Barefoot and were the basis of the affidavit for my disqualification filed by him for his erstwhile client, Occidental.

Barefoot, Hayutin and Hammer were, nevertheless, because of the urgent need of the funds to protect the stockholders and creditors of both Parker and Barnholt's company, Western, granted until January 30 to meet their obligation to bring in the promised $2,500,000 financing *in cash with no strings attached*, as agreed in open court when the second Western plan was approved (Record, Nov. 3, 1961). This was *not* done. Barefoot became menacing when he continued to pressure and importune me in Chambers to extend the time further. I then advised him, through the trustee's attorney, that I would not thereafter be available to him and Occidental's then attorney in Chambers but would be available for conference in open court, and would hear them from the bench at any time either of them cared to appear with the trustee, the attorney for the trustee, or other interested attorneys.

Bohanon and Barefoot had withdrawn as counsel for Occidental (application and order of August 3, 1960) after

the first hearing held by me following Judge Wallace's death on the stated ground made to me in Chambers by Bohanon that Hammer and Occidental had not acted in good faith in refusing to consummate the original plan and for that reason they would not represent them further. This reason, leading me to believe they were not parties to the fraud and disapproved of it, confirmed the full confidence I had at that time in both Bohanon and Barefoot as honorable members of the Bar and thus made it possible for Barefoot later, after Bohanon had been appointed a member of my Court, and Barefoot was continuing to represent Hayutin and Hammer, to again mislead me. The attorney of record for Occidental after Bohanon and Barefoot withdrew, did not certify that the Affidavit for Disqualification filed by Occidental was filed in good faith. It was certified to by Barefoot, who then again assumed representation of his erstwhile client, Occidental. Thereafter the interim attorney of record for Occidental filed his withdrawal.

Every fact learned in every conference held prior to January 30 [entirely proper and necessary conferences in a Bankruptcy case where the Federal Statutes give the judge additional extraordinary powers since most of his duties in Bankruptcy cases are administrative (see 11 U.S.C. Sec. 11), which specifically authorizes (Section 2) "in Chambers" conferences] was put into the record by me from the Bench in judicial language at fully noticed hearings. Barefoot, Hayutin and Occidental were informed of every fact learned, but, for Barnholt's protection, they were *not* advised of the fact that the conference with Barnholt had

been held on January 20, 1962, when we were investigating the conduct of Barefoot to determine with certainty whether he was derelict in his duty to his client, Barnholt (Western), and guilty of collusion with Hayutin and Hammer to defraud him (Western). They were, however, advised of all *facts* learned at that conference at the conference held three days later (Record, Jan. 23-24, 1962).

At the fully noticed hearing on January 30, 1962, I adjudged Hayutin and Hammer (Occidental) in default of their obligation to finance Western in the second plan, set two motions already pending against Occidental for hearing on a date certain. I also ordered a fraud suit filed against Hayutin in Federal Court in New York. Hayutin's associates in that transaction, who were represented by skillful counsel, settled for $150,000 cash before the suit was filed the following week. Mr. Kirk Windle, attorney for the Securities and Exchange Commission, stated in the fully noticed hearing of November 3, 1961, that the claims exceeded in value the figure of $1,000,000.

Hayutin's liability in the case now pending in New York is about $570,000. The case is well and conclusively documented and was ordered filed by me at the request of the Securities and Exchange Commission. Prior to authorizing the suit, well documented evidence was presented to me showing that Marvin Hayutin, associate of Dr. Hammer and self-styled "money finder," had been guilty of violation of the Securities and Exchange Act and the Internal Revenue Laws in the original sale of the Parker Securities to the public. This evidence was later confirmed

and further documented by documents obtained by me at the conference of February 2, 1962.

I had stated in the record at the January 30 court hearing and at other hearings, based on evidence before me, that no financing of the Western plan would be approved under any arrangement whereby it appeared that Hayutin and Hammer might in any manner be able to obtain control of Western because I did not have confidence in their integrity; that it was my duty to see that any reorganized company approved by me was properly financed and that it would be operated by men of ability and integrity; that no financing would be approved whereby stock was issued to Hammer or Occidental unless proper safeguards were provided to prevent their obtaining control of the reorganized company since it was apparent that Occidental coveted certain very valuable assets of Western and Parker and had attempted to perpetrate a fraud on the court to obtain them.

Thereafter Occidental, through Barefoot, who with his then partner, Luther Bohanon, had withdrawn as its attorney for the stated reason that Occidental was guilty of bad faith in failing to consummate the original plan confirmed by Judge Wallace, and now acting as attorney for Occidental against the interest of his erstwhile client, Barnholt (Western), demanded the transcripts of other conferences. This duplicity naturally caused me to doubt his right to them, or for that matter his right to act as counsel for Occidental under such circumstances.

At this point it is significant to note that if I continued to handle the case it was likely quite apparent that Ham-

mer (Occidental) could not get control of the $20,000,000 of assets involved in the plan of reorganization and that if I remained in the case, the important proceedings against Hammer and Occidental, which I had set for trial, and the fraud suit against Hayutin which I had ordered filed in Federal Court in New York, would be prosecuted with diligence.

At no time did I intend to try the matters involving Hammer, Occidental and Hayutin, for the reason that I would of necessity be an important witness in connection with those factual matters not shown by the record but coming to my knowledge during the proceedings from personal conferences with attorneys for the parties and otherwise. This is one of the reasons that I *readily* and *immediately* upon the filing of the affidavit for disqualification sent word to Barefoot by the attorney for the trustee that regardless of the merits of the affidavit, I would assign these matters to another judge of the court for trial.

It is significant that in spite of this knowledge, which it is admitted in the record was conveyed to Mr. Barefoot on Saturday, the day after the affidavit was filed, that, nevertheless, the mandamus or prohibition proceeding was filed in the Court of Appeals the *following Tuesday without conveyance of this information* to the Circuit Judge who signed the order staying proceedings. The failure to do so was a flagrant violation of legal ethics.

It is also noteworthy that although on Friday preceding the Monday set for the hearing in the Court of Appeals at Denver of the petition for mandamus or prohibition, I entered and signed a written order finding the affidavit insufficient but nevertheless stating that *the Occi-*

dental issues would be tried by another judge of the Court. When served with a copy of this order on Friday, counsel for Occidental notified the attorney for the trustee that the hearing in the Court of Appeals would proceed on the following Monday, regardless of the fact that *all relief prayed for* had already been granted by me.

At this hearing, presided over by Chief Judge Murrah, the Court of Appeals, although no prior notice was given, permitted Occidental to file an amended petition praying for my disqualification in the *entire* proceeding, notice of which has never yet been served on me. At that time and at no time prior to the entry of the judgments by the Court of Appeals and Council did I ever consider the action as a *personal one* against me and could not have reasonably anticipated that such unprecedented unconstitutional orders would be entered. At most I might be disqualified, or so I thought and believed at the time, and was advised by counsel that that could not happen because the Court was without jurisdiction.

I considered the proceeding there as one involving the rights of the parties to the action, and that it was no concern of mine except that I knew it was my duty to refuse to disqualify in the *entire* action for the reason that the motives of Hammer (Occidental) in undertaking to have me removed from the entire case were not honorable, having reached the inescapable conclusion from the evidence that they were attempting to obtain control of the $20,000,000 of assets of Parker and Western for their own aggrandizement at the expense of the stockholders of Parker and Western and that Hammer (Occidental) knew

that this could not be done as long as I remained in the case.

It is significant that the attorneys representing all interested parties, except Occidental and Hayutin, and including the Securities and Exchange Commission, expressed approval of my orders and objected to my disqualification.

It is worthy of note that neither Occidental nor Hayutin were stockholders nor creditors of Parker Petroleum Company at the time of the institution of the reorganization proceedings but *acquired their interests thereafter*, which places them in an *entirely different category* from the original and vitally interest ' stockholders and creditors. Hammer's stock was acquired for him by Hayutin in connection with the first proposed and aborted plan of reorganization. Hayutin acquired a large claim against the Company in another reorganization proceeding handled by Judge Wallace, to-wit: Indian Drilling Mud, Inc. There is on file in the Parker Proceeding (filed June 9, 1960) an attorney's lien whereby his attorneys, Barefoot and Bohanon, claim a 25 per cent interest in his $57,810.90 claim and interest and 25 per cent of any and all cash distributions and 25 per cent of all debenture distributions that may be made to him out of and from and by reason of the Parker Petroleum Co., Inc.

Every conclusion of fact drawn by me and stated herein is based upon and deduced from actual available evidence shown by the record and coming to my knowledge as judge in the case, and are the only conclusions which I could rationally draw from the evidence. I verily believe that these same conclusions would be inescapable to any disinterested, experienced judge or lawyer upon considera-

tion of the same evidence. Any bias or prejudice against Hammer (Occidental) was created by the evidence before me. I did not know them personally or by reputation prior to taking over the *Parker* case.

From the above statements it should be clear that this is not the case which Occidental has undertaken to pose before this ultimate tribunal, and it should now be apparent that this is not an ordinary case where a judge is asked to disqualify. No honest judge seeks or desires to handle *any certain litigation* and is always quick to withdraw when there is the slightest ground to believe that any party with reasonable justification wishes him to do so. It is my belief, however, that it is a judge's duty *not* to disqualify where the facts and circumstances make it apparent that the request for disqualification *is not made in good faith* but is an attempt to run him off the Bench for the purpose of obtaining another judge after the party has learned how the judge will likely decide the case from conclusions the judge has drawn from evidence coming before him in the proceedings.

It is also significant here that the attorneys for Occidental did not indulge in the usual courtesy extended by counsel to the Court by asking him whether or not he would object to having some other judge try the case. Had that courtesy been extended here, counsel would have learned before filing the affidavit of disqualification, as they did immediately afterward, that the judge had no intention of trying the matters involving Occidental and Hayutin as he considered himself a material witness in those proceedings.

The inescapable conclusion to be drawn from their failure to do so is that they wished to discredit me by

obtaining wide publicity of the out of context, seemingly scurrilous and careless language used in the informal conferences, which were quoted by them in the Affidavit of Disqualification, and thus bluff or scare me off the Bench. When they were not able to do so they were forced to pursue other means.

It was only when word was received that Chief Judge Murrah would preside at the hearing in Denver that it was decided not to send the notes. Research disclosed that the court reporter, by Statute 28, U.S.C. 753(c) was subject to the supervision of the appointing court, "including dealings with parties requesting transcripts," and it was determined that Mr. Barefoot was not entitled to obtain by subpoena *duces tecum* to the reporter, the stenographic notes or transcripts which had at all times been in my physical possession, except when some of them were delivered to the reporter for transcription and return. For that reason the reporter was *told to state that Judge Chandler said* that the notes were in his possession and had been in his actual or constructive possession at all times even when delivered to him for transcription and that if the Court of Appeals came to the conclusion that Barefoot was entitled to transcripts made from the notes, and so ordered, he would, of course, furnish them.

I am not going to overlook the *unbelievable* conclusion of the Court of Appeals that I *tried to prevent* my reporter from the performance of his official duties. *Of course, I did not.* There could not possibly have been any reason for me to do so. I did not think that Mr. Barefoot under the circumstances existing, could legally obtain them by sub-

poena to my reporter to bring them when by Federal Statute [28 U.S.C. § 753(c)] the reporter was subject to my supervision in the performance of his duties, "including dealings with parties requesting transcripts." I am still of that legal opinion.

If any error was made in not permitting him to take the notes, it was *at most* an *error of law* made by me after consultation with skillful counsel and many hours of research in order to determine my legal duty in that regard, and in this connection I might state that the question of not sending the notes never arose in my mind until I learned on Friday before the hearing in Denver on Monday that Chief Judge Murrah would preside.

In closing it seems proper to call attention to the *important fact* that *no improper conduct* on my part was *disclosed when the records of the so-called "secret" conferences were transcribed*, unless it be my carelessness in using common, ordinary, everyday descriptive terms in the informal conferences to describe Dr. Armand Hammer. The first of the seven words so often quoted by Occidental, I am reasonably certain, I did not use, but it is possible I did so.

As to all of the terms, they are in the language of the street and are quite accurately descriptive of the kind of person the evidence in the *Parker* case shows Dr. Armand Hammer to be. They may be even more accurately descriptive of him than my finding from the Bench using judicial language that *he did not possess the requisite integrity and moral character* to be trusted not to make away with the assets of Parker and Western worth millions of dollars.

QUESTIONS PRESENTED

1. Can a Court of Appeals or Judicial Council, having no jurisdiction of a Petition for Mandamus or Prohibition, during the trial of a case by a trial judge, exercise *self-assumed inherent right* to exercise naked power to control the actions of a trial judge, by disqualifying him, thus destroying his necessary judicial independence, the ordinary right of appeal being available to an aggrieved party?

2. May a Court of Appeals, totally without jurisdiction, but imbued with a sense of omnipotence, disqualify a trial judge in a case he is at that time trying, *simply because they do not like* the manner in which he is trying it?

3. May a Court of Appeals constitute itself a Judicial Council and thus *create* its own jurisdiction to do so?

4. Is there a *sustainable compatibility between* the expressed conclusion that the trial judge was conducting "closed door hearings, meetings, discussion in Chambers," etc., with its "unholy" implications, and the expressed conclusion that he "tried to prevent a court officer from the performance of his official duties," etc., wholly untrue but constituting, if true, as charged by Occidental in its Brief in Opposition to Petition for Certiorari, two felonious crimes against the United States, and the later expression of the Court and/or Council in reply to the judge's request for *specific* findings of the facts upon which such conclusions were based, that the writ "*does not cast any reflection upon your integrity or your devotion and dedication to the duties of a federal judge*"? (See Exhibit A hereto.)

5. Does such judgment of the Court of Appeals and or Council containing conclusions of fact constituting Federal crimes which are published in the Federal Reporter 2nd Series constitute a clear violation of the trial judge's constitutional rights?

6. If such a judgment becomes final by denial of certiorari, is the trial judge precluded from later proving that such conclusions are wholly contrary to the true facts?

7. Would such conclusions in the judgment of the Court of Appeals and/or Council have such probative weight as to make it virtually impossible for the trial judge to convince even unprejudiced persons that the conclusions were the result of a total lack of understanding on the part of the Judges of the Court of Appeals of the true facts involved and had been made in what virtually amounted to an *ex parte* hearing?

8. Should such judgment be permitted to stand and be published in the bound volumes of the Reporter system, strengthened and made more authentic to the average citizen and even the average lawyer by the denial of certiorari by the highest court of the land on the grounds of *expediency* or the *lack of the importance* of the great principles involved?

9. Is not such a judgment usurpation of the powers and duties of the trial court?

10. Does a Court of Appeals have the inherent power to arbitrarily designate a case, an "exceptional" one, and thereby create for itself the "power and inescapable duty

to act" * * * "*under the inherent power of a United States Court of Appeals to effectuate what seems to it to be the manifest ends of justice.*" (See 2nd paragraph of Judgment of the Court of Appeals in the instant case.)

11. Does a Court of Appeals have unlimited power to supervise trial judges?

12. Is the fact that this is a case of first impression, standing alone and that the only precedent the Court of Appeals could cite for its power to enter the order was its own, the *Ritter* case, 273 F.2d 30, from which it quotes, (see Question 10) and then states, "Application to the United States Supreme Court for relief from our action in the Ritter case was denied," indicative of an effort to bolster its authority showing the *weak* foundation upon which the decision here stands?

13. Is the Resolution of the Ninth Court of Appeals (Exhibit B) indicative of a *serious conflict of circuits* on the question of the power of a Court of Appeals to call "district judges on the carpet * * * to crack the whip over them" in order to control their actions instead of by the time-honored method of reversal with directions, to which traditional method no trial judge objects.

The foregoing facts and questions, it is hoped, will point up the folowing:

By the specific words of its decision the Court of Appeals and/or Council arrogates unto itself *the broadest possible power to control, in advance, the decisions of the trial court,* even to the extent of choosing which judge of the multiple judge trial court shall proceed further in the litigation.

The case before the Court of Appeals was not exceptional, but the decision there and here for review is such an *extremely unusual* and *unprecedented* one, that it poses the question, "HOW COULD SUCH A THING HAVE HAPPENED IN AMERICA?"

The answer to this question, it seems to me, is implicit in the facts stated and questions posed. It surely could not have happened in America. Yet it did happen and the answer to HOW could it have happened or WHY did it happen may be apparent from the above observations.

CONCLUSION

I wish to state that the irregularities involved in the Court of Appeals judgment would be easier for me to accept if it were not for the fact that Chief Judge Murrah failed to disqualify himself, and that the Court which entered the unprecedented and unconstitutional judgment against me was presided over by Chief Judge Murrah, not only as a presiding judge *but as an advocate against me*, as shown by the record of the proceedings in open court. Of his own motion he broadened the issues to include the determination of whether I was entitled to sit in the case at all, and I believe it is implicit in that statement and others made that he did not think I was entitled to sit in that case or any other case, indicating the extent of his prejudice. Although I attempted to call his disqualification to the attention of the court in open court through counsel who had identical sealed messages from me for each of the judges, and who again offered them to the Court or Coun-

cil in conference after the open hearing and before the entry of the judgment, their receipt was refused. The message stated that Judge Murrah was disqualified to sit on the Bench or in conference to exhort his colleagues to condemn me because of his long standing, strong prejudice against me and his long standing, strong prejudice in favor of his former partner, Luther Bohanon, who is his warm, long time personal friend and former law partner. I further stated that he was prejudiced in favor of Barefoot, Judge Bohanon's long time law partner.

I believe that, under these circumstances, Chief Judge Murrah had the clear obligation to disqualify as required by 28 U.S.C., Sec. 455.

I regret the necessity of bringing this case here, but I would be less than a man, and unqualified for the sacred position which I have held for approximately twenty years, if I failed, because of the unpleasantness of the duty, to do so.

In closing it should be *emphasized* that *there is now no question involved here affecting the Parker reorganization*. That case, after my disqualification, has been handled by a skillful and competent judge and in all likelihood will soon be closed.

There is involved here *only* the request of petitioner that this Court grant *certiorari* and hold that the Court of Appeals and Judicial Council were without jurisdiction or authority to enter the judgment of disqualification containing the offensive and improper conclusions of malfeasance and that such judgment and the scandalous matter

filed by Respondent in violation of Rule 40(5) be expunged from the records of this Court, the Court of Appeals and the Federal Reporter, 2nd Series.

The legal questions have been so fully and skillfully briefed by counsel and *amici curiae* as to leave no doubt that neither the Court of Appeals nor Council had jurisdiction.

To deny *certiorari* and permit this decision to stand will add verity to the conclusions finding Respondent guilty of misconduct and malfeasance. Laymen do not understand that the denial of *certiorari* does not mean that the judgment involved is approved. They think it affirms and approves it.

Petitioner seeks only the same protection of his constitutional rights that this ultimate Court so zealously extends to the humblest citizen.

I will close by respectfully stating that the parties who have charged and are vilifying me perpetrated a gross fraud on my late associate, Judge Wallace, and tried to perpetrate a gross fraud on me. They are now engaged in defaming the judge who caught them "red handed" and prevented, temporarily, the success of their fraudulent scheme. I assert, based on evidence coming to my attention in the *Parker* case, that they are active *stock manipulators* and were able to manipulate the over-the-counter market to run the stock of Parker and Western up, while obtaining extensions of time to furnish promised financing from the unsuspecting judge (at one time the stock reached

more than three times its value at the time of the confirmation of the Western plan) attempting, thus, to obtain funds to finance the plan instead of procuring it legally as promised.

Petitioner respectfully asks leave to further document this "Appendix" with documents not presently available through no fault of Petitioner.

Respectfully submitted,

STEPHEN S. CHANDLER,
United States District Judge.

EXHIBIT A

ORIE L. PHILLIPS
DENVER 1, COLO.
SAM G. BRATTON
ALBUQUERQUE, N. MEX.
WALTER A. HUXMAN
TOPEKA, KANS.
ALFRED P. MURRAH
OKLAHOMA CITY 1, OKLA.
JOHN C. PICKETT
CHEYENNE, WYO.

CIRCUIT JUDGES

TOM C. CLARK
CIRCUIT JUSTICE
WASHINGTON 15, D. C.

United States Court of Appeals

TENTH CIRCUIT

Cheyenne, Wyoming
April 30, 1962

Honorable Stephen S. Chandler,
United States District Judge,
Oklahoma City, Oklahoma.

Dear Judge:

At its meeting in Wichita, Kansas on April 25, 1962, after hearing your full statement, the Judicial Council of the Tenth Circuit of the United States, concluded that no changes should be made in its disqualification order of April 20, 1962, entered in the matter of the reorganization of Parker Petroleum Co. Inc., Docket Number 10807—Bankruptcy, Pending in the Western District of Oklahoma.

The Council appreciates your feelings in the matter but is satisfied that the implications which you place upon its action are not justified. The order does not cast any reflection upon your integrity or your devotion and dedication to the duties of a Federal Judge. The Council recognizes that Judges have feelings and reactions as other human beings. Consequently, they may sometimes become so embittered and incensed, for reasons understandable to them, including what they consider misconduct of parties interested in matters pending before them, that they cannot give

[EXHIBIT A CONTINUED]

the calm and impartial consideration to the final disposition of these matters which the law demands. When these conditions exist, it is best for everyone concerned that they step aside.

Very truly yours,

(signed) John C. Pickett
John C. Pickett,
For the Council

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

February 1, 1961

TO ALL CIRCUIT AND DISTRICT JUDGES OF
THE COURTS OF THE UNITED STATES:

On November 13, 1959, the Judicial Council of the Ninth Circuit unanimously adopted a resolution opposing a draft of a proposed amendment to Section 332, Title 28, U.S.C., relating to the composition and powers of the Judicial Councils. At the same meeting the Council unanimously approved a statement of opposition to such proposed amendment.

At a meeting of the Council held on October 12, 1960, the Secretary of the Council was directed to mail copies of such statement to all the Circuit and District Judges of the Courts of the United States. Pursuant to that resolution I am forwarding the enclosed statement.

GILBERT H. JERTBERG
Secretary of the Judicial Council
of the Ninth Circuit

PROPOSED AMENDMENT OF § 332, TITLE 28, U. S. C.
RELATING TO JUDICIAL COUNCIL

Statement by Ninth Circuit Council

We think it is apparent that the proposed amendment of Title 28, §332, concerning judicial councils, is intended to be a forerunner of pressures to increase the activity of such councils. This is particularly apparent from the new language found in subdivision (6). The taking of "such action thereon as may be required to obviate congestion or delay in the disposition of judicial business" takes in a lot of territory.

[EXHIBIT B CONTINUED]

The present arrangements, through statutes, and through the processes supervised by the Judicial Conference, supply means, both useful and inoffensive, for the encouragement of judicial efficiency and dispatch. Statistical records are gathered and made available to the judges concerned, and to the judicial councils, showing the state of the business in the hands of each district judge. Conferences or seminars for judges, designed to evaluate such techniques as pre-trial conferences and improved sentencing procedures are frequently available. A properly arranged program at the circuit conferences, where attendance is compulsory, have similar advantages. In our view this process is an adequate incentive; and we are also convinced that pressures going much beyond this would do more harm than good.

If there is any one thing that distinguishes a federal judge it is his integrity and his independence. The obvious purpose of the proposed enactment (together with the implied suggestion that now judicial councils should be put to more use), is to provide means for calling district judges on the carpet. In our view nothing could be more subversive of a district judge's pride and sense of responsibility. We might as well abandon a federal judicial system if we cannot be assured, without schoolmasterish supervision, that every judge will do his level best.

Even the present system of supervision of district judges has questionable aspects. The most important accomplishments of a good judge cannot be recorded on the Administrative Office's IBM machines. Under their purely quantitative evaluations, whereby every case weighs the same as every other case, the more painstaking, careful and conscientious judge often suffers a disadvantage;—time taken by him to assure a sound decision puts him in jeopardy on his statistics. The judge who mass-produces decisions with a lick-and-a-promise system will look much better on the IBM cards.

We think the system of control of judges through administrative bodies such as the Conference and the Council has gone far enough. In our view the proposed increase in supervisory activity is most unfortunate. The inestimable benefits of a judicial system handled by trial judges who are answerable to no man, and under no control other than that of their own consciences, could well be lost by a change calculated to create the feeling on the part of the judge that he was just another employee taking orders from a judicial council acting as a quasi board of directors.

As for the present members of this judicial council, we do not propose to take any action which might be construed by the district judges as an effort to crack the whip over them. The district judges in this circuit will, we are confident, know how to adapt to their own needs, and to make use of, the facilities for judicial improvement presently available through the Judicial Conference, the Administrative Office and the circuit conferences. If, once in ten years, or thereabouts, a judge so deteriorates mentally or morally as to require certification under §372 (b) of Title 28, we shall be able to take appropriate action, whether district judges are, or are not added to the council. As for the remainder of the time, while we are not adverse to providing some district judges with quarterly trips to San Francisco, we think travel money could be put to a better use.

[EXHIBIT B CONTINUED]

UNITED STATES DISTRICT JUDGES
of
THE NINTH CIRCUIT

PRESIDENT
HON. DAVE LING
PHOENIX, ARIZONA
SECRETARY
HON. ALBERT C. WOLLENBERG
SAN FRANCISCO, CALIFORNIA

December 11, 1961

Dear Judge:

At the suggestion of Judge Dave Ling, President of the District Judges for the Ninth Circuit, I am writing to advise you of a plebiscite by secret ballot taken by Judge William J. Lindberg, the District Judge representative of the Ninth Circuit to the Judicial Conference of the United States, on whether the District Judges of this circuit approve or disapprove H.R. 6690 regarding District Court representation on Circuit Councils.

Judge Lindberg reports the result of the vote as follows:

Number of ballots mailed out to District Judges (38 active, 4 retired)	42
Number of ballots cast	41
In favor of H.R. 6690	0
Against H.R. 6690	41
In favor of H.R. 6690 with the Keating Amendment	0

Judge Ling has expressed the feeling that it may be of interest to you to know how the District Judges of this circuit feel on this issue.

We are informed that H.R. 6690 as introduced has passed the House, has been approved by the Senate Judiciary Committee, and that the bill, together with the Keating Amendment, is riding on the Senate calendar. We

are further informed that the Judicial Conference of the United States, by a divided vote, last September approved H.R. 6690. We enclose a copy of H.R. 6690 and the Keating Amendment.

Sincerely,

/s/ Albert C. Wollenberg
Secretary

Encl.